

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3171 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JETHABHAI AMARABHAI VANKAR

Versus

UNION OF INDIA

Appearance:

MR BIPIN I MEHTA for Petitioner

MR SHANTILAL S SHAH for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/01/97

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner, a Rakshak, appointed in the Railway Protection Force, filed this Special Civil Application, and challenge has been made thereunder to the order of the disciplinary authority, under which he was ordered to be removed from services after proof of alleged misconduct against him, as well as the order of the appellate authority confirming the said order.

2. The counsel for the petitioner raised several contentions during the course of arguments, but I do not consider it necessary to advert to all those contentions except the one, which according to me is sufficient to allow this Special Civil Application.

3. It is not in dispute that one Pravinchandra Jani was a co-delinquent employee in the inquiry. The inquiry was held against both, the petitioner and Pravinchandra Jani, for similar charges. The Inquiry Officer found none of the charges proved against both of them. The disciplinary authority did not agree with the finding of the Inquiry Officer and after giving notice, the petitioner was ordered to be removed from services, whereas the disciplinary authority imposed lesser punishment upon other person (Pravinchandra Jani).

4. The order of the appellate authority is on the record as annexure 'G' and I find therefrom that the petitioner has raised a point that another Rakshak, Pravinchandra Jani, was also charge sheeted for the similar charges, but he was given a lesser penalty. The appellate authority has dealt with such an important ground raised by the petitioner in its order in most cursory manner. The finding of the appellate authority on this point is as under:

"The second point raised by the appellant that another Rakshak, Pravinchandra Jani was also charge sheeted for similar charges cannot be taken into consideration at this stage as that case is not before me. Moreover, at this later stage I cannot enhance any penalty even if I wish to, as per rules. The appellant also cannot derive any benefit because each case is decided on its own merits."

5. Another point raised by the petitioner before the appellate authority that Pravinchandra Jani was earlier dismissed twice from services, and the appellate authority dealt with this point also in a cursory manner which is apparent from the order, which reads as under:

"I am not concerned with the previous record of the service either of the appellant or Rakshak Pravinchandra Jani, as mentioned by the appellant. The decision is taken purely on the merits of the case in question."

6. The memo of appeal has been filed by the

petitioner along with this Special Civil Application as annexure 'F'. As stated earlier, it is not in dispute that both the petitioner and Rakshak Pravinchandra Jani were charge sheeted for similar charges. The Inquiry Officer has not found any of the charges proved against any of them, but the disciplinary authority has disagreed with the finding of the Inquiry Officer. But while giving penalty, in the case of petitioner, he was ordered to be removed from services, whereas Rakshak Pravinchandra Jani was given the penalty of withholding of one grade increment for two years. In the appeal, the petitioner has given out the reason for giving this discriminatory treatment in the matter of punishment to the person similarly situated. The petitioner has come up with a case that the apparent reason for doing so is that Pravinchandra Jani and the disciplinary authority both were Brahmins, whereas he was a schedule caste. It has further been stated that so far as the previous record is concerned, his record is not better than him.

7. Taking into consideration the totality of the facts of this case and further fact that the appellate authority has not gone on the question, whether the penalty imposed in the present case to the petitioner is proportionate to the guilt or not, I consider it to be appropriate to remand this matter back to the appellate authority to decide the appeal of the petitioner on merits after taking into consideration the observations made by this court in this judgment and in accordance with law.

8. It is to be noted that, in the matter that what appropriate penalty should be given to a delinquent employee for proved misconduct, this Court has very limited power of judicial review, but so far as the appellate authority is concerned, it has sufficiently wide powers and discretion in the matter. Reference in this respect may be made to the two decisions of the Hon'ble Supreme Court in the case of State Bank of India vs. Samendra Kishore reported in JT 1994 (1) SC 217 and in the case of B.C. Chaturvedi vs. Union of India reported in JT 1995 (8) SC 65.

9. When this Court has very limited power of judicial review in the matter of penalty to be given to a delinquent employee for proved misconduct, it heavily lies on the appellate authority to go on this question and to record the reasons, that for what reason it has not interfered with the quantum of punishment given to a delinquent employee by the disciplinary authority.

10. In the result, this Special Civil Application succeeds in part, and the order of the appellate authority, Security Officer, Western Railway, Ajmer, annexure 'G' on the record is quashed and set aside, and the appellate authority is directed to decide the appeal of the petitioner afresh in accordance with law and taking into consideration the observations of this court made in this judgment. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-